



# CITY OF LODI

## COUNCIL COMMUNICATION

**AGENDA TITLE:** Proposed Sales Tax Adjustment for Library Services; San Joaquin County Libraries Cost Sharing Resolution; Memorandum of understanding (Election Expenses)

**MEETING DATE:** June 21, 1995

**PREPARED BY:** City Librarian

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**RECOMMENDED ACTION:** That the City Council adopt the following resolutions:

- a. Res. No. 95-83, "A Resolution of the Lodi City Council in Support of Legislation for Enactment of a Transactions and Use Tax for Library Purposes" (Exhibit A).
- b. Res. No. 95-84, "A Resolution of the Lodi City Council In Support of Ballot Measure to Increase Sales Tax Rate in San Joaquin County and Election Cost Sharing Plan" (Exhibit B) and further that the City Council authorize the execution of the "Memorandum of Understanding for the Payment of Election Expenses Approving Ordinance to Levy Tax for Library Services" (Exhibit C).

**BACKGROUND INFORMATION:** The State's fiscal crisis has severely affected local government, particularly County government services. The Stockton-San Joaquin County Public Library has been affected by the loss of Special District Augmentation money from San Joaquin County through state transfers of property tax. Nearly one quarter of the County Library's budget was slashed over a three-year period. County Library services were impacted. Branch hours in the county were cut by 65% and in the City of Stockton over 40%. Their library materials budget decreased by 45%. Lodi Library was impacted with an increase in patron usage by county residents.

An intergovernmental Task Force on Library Funding was formed to study the issues in May, 1994. Lodi was represented by Nancy Martinez, a library staff member. The Task Force has recommended a dedicated 1/8 cent sales tax increase in San Joaquin County to supplement existing revenue for library services. A sales tax for the library was recommended because it would support library services for the entire 10-year life of the library measure.

A November, 1995 election is the target timetable for a library ballot measure. Two thirds vote of the electorate would be required for such a measure to go into effect. State legislation is first required to enable San Joaquin County to put a 1/8 cent sales tax measure on the ballot.

Senator Patrick Johnston has agreed to sponsor such legislation, provided the councils of the incorporated cities in the county, as well as the Board of Supervisors, indicate their support for the proposed tax increase for the library, and their support of his efforts to enact enabling legislation.

APPROVED: \_\_\_\_\_

THOMAS A. PETERSON  
City Manager

The extra money received for the Lodi Public Library will be used to increase hours of operation, and ensure a broader use of technology-oriented services than currently envisioned. As the new Lodi Public Library's Long-Range Planning Committee surveys the community and resources, service requests unknown at this time will be made apparent and can be considered in light of the sales tax revenue.

**FUNDING: Exhibit A: None required**

**Exhibit B: Sales tax revenue if measure passes.**

**Library Fund/General Fund if measure fails.**

Respectfully submitted,

A handwritten signature in cursive script, reading "Kathleen Andrade".

Kathleen Andrade  
City Librarian

KA:br

Attachments

RESOLUTION NO. 95-83

A RESOLUTION OF THE LODI CITY COUNCIL  
IN SUPPORT OF LEGISLATION FOR ENACTMENT OF A  
TRANSACTIONS AND USE TAX FOR LIBRARY PURPOSES

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WHEREAS, over one-half of the revenue collected by San Joaquin County to support the operations of the Stockton-San Joaquin County Public Library has been lost due to the elimination of the Special District Augmentation Fund; and

WHEREAS, library services to residents served by the Stockton-San Joaquin County Public Library have been reduced drastically as a result of this loss of revenue; and

WHEREAS, the Lodi Public Library has reduced hours of service, invaded reserves, and has felt an impact from the loss of Library service elsewhere in San Joaquin County; and

WHEREAS, an Intergovernmental Task Force on Library Funding was formed to study Library operations and recommend mechanisms to provide adequate library service to area residents; and

WHEREAS, the Task Force recommended that such funding be accomplished by an additional county-wide dedicated transactions and use tax of one-eighth of 1 percent which would generate an estimated \$5M per year for the Library; and

WHEREAS, the one-eighth of 1 percent transactions and use tax would supplement existing revenue for the Library; and

WHEREAS, the City of Lodi would receive approximately 14% of any county-wide transactions and use tax for its Library; and

WHEREAS, the Library measure will need to be passed by 2/3 of the voters and will expire in ten (10) years; and

WHEREAS, a vote to increase San Joaquin County transactions and use tax rate by one-eighth of 1 percent for library services requires enabling state legislation;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lodi to: 1) support the Task Force recommendation to increase the transactions and use tax by one-eighth of 1 percent for library services and efforts to secure the required enabling legislation and 2) upon passage, this resolution will be conveyed to Senator Patrick Johnston, Assemblyman Michael Machado, and Assemblyman Larry Bowler.

Dated: June 21, 1995

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I hereby certify that Resolution No. 95-83 was passed and adopted by the City Council of the City of Lodi in a regular meeting held June 21, 1995, by the following vote:

AYES: COUNCIL MEMBERS -

NOES: COUNCIL MEMBERS -

ABSENT: COUNCIL MEMBERS -

ABSTAIN: COUNCIL MEMBERS -

JACQUELINE L. TAYLOR  
Acting City Clerk

**A RESOLUTION OF THE LODI CITY COUNCIL  
IN SUPPORT OF BALLOT MEASURE TO INCREASE SALES TAX RATE  
IN SAN JOAQUIN COUNTY AND ELECTION COST SHARING PLAN**

WHEREAS, the Lodi City Council supports a ballot measure to increase the sales tax rate in San Joaquin County by 1/8 cent to supplement existing funding for the Lodi Public Library; and

WHEREAS, residents of Lodi will benefit directly from increased revenue for library services; and

WHEREAS, there are election costs associated with the proposed ballot measure; and

WHEREAS, the jurisdictions whose residents would benefit from increased revenue for library services should share in the cost of said election;

BE IT THEREFORE RESOLVED that City of Lodi accepts the election cost-sharing plan outlined below, and agrees to the conditions so outlined:

**ELECTION COST-SHARING PLAN:**

- 1.) If a transactions and use tax of one-eighth of one percent for library services is passed by 2/3 vote, the costs of placing the measure on the ballot will be paid from the additional revenue generated for the library by the tax;
- 2.) If the measure does not pass by 2/3 vote, the City of Lodi will pay its share of the election cost, based upon the percentage of registered voters at the time of the election.
- 3.) In order to implement this agreement, the City Council will direct appropriate City staff to execute a Memorandum of Understanding with the County of San Joaquin and the cities of Escalon, Lathrop, Manteca, Ripon, Stockton and Tracy.

Dated: June 21, 1995

I hereby certify that Resolution No. 95-84 was passed and adopted by the City Council of the City of Lodi in a regular meeting held June 21, 1995, by the following vote:

AYES: COUNCIL MEMBERS -

NOES: COUNCIL MEMBERS -

ABSENT: COUNCIL MEMBERS -

ABSTAIN: COUNCIL MEMBERS -

JACQUELINE L. TAYLOR  
Acting City Clerk

**MEMORANDUM OF UNDERSTANDING FOR THE  
PAYMENT OF ELECTION EXPENSES APPROVING ORDINANCE TO LEVY TAX FOR  
LIBRARY SERVICES**

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THIS MEMORANDUM OF UNDERSTANDING is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 1995, by and between SAN JOAQUIN COUNTY, hereinafter referred to as "COUNTY", and the Cities of STOCKTON, RIPON, LATHROP, MANTECA, LODI, ESCALON, and TRACY.

**WITNESSETH:**

**WHEREAS**, legislation has been proposed to authorize the establishment of a transactions and use tax for the purpose of funding library programs and operations which requires the adoption of an enabling Ordinance by the County and an election to approve the Ordinance; and

**WHEREAS**, the County and each of the Cities will benefit directly from increased revenue for the library services and there are election costs associated with the proposed ballot measure which should be shared by the jurisdictions; and

**THE PARTIES AGREE AS FOLLOWS:**

**1. PASSAGE OF BALLOT MEASURE**

If a ballot measure passes with a 2/3 vote to approve an Ordinance to establish a transactions and use tax for the purpose of funding library services, the cost of the election will be paid from the revenue generated by the tax for library services.

**2. FAILURE OF BALLOT MEASURE**

If a ballot measure does not pass with the 2/3 vote, each jurisdiction shall pay its share of the election costs, based upon the percentage of the registered voters within the jurisdiction at the time of the election, to the County.

As an option to making the payment described above and upon written agreement of the County, a City, and the Librarian of the Stockton-San Joaquin County Library, a City may instead receive a reduction in its library services equal to that City's share of the election costs, based upon the percentage of registered voters at the time of the election in the City. The particular services to be

reduced will be at the discretion of the library administration and will continue until such time as the election costs are covered by a like reduction in library services. The County will transfer the amount of the election costs attributable to the City from the County Library Fund to its General Fund to cover the costs incurred by the County for the election and that amount will be deducted from the amount of funding which would have been paid by County to the Stockton-San Joaquin Library.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Understanding on the date first above written.

COUNTY OF SAN JOAQUIN, a  
political subdivision of  
the State of California

ATTEST: LOIS M. SAHYOUN  
Clerk of the Board of Super-  
visors of the County of San  
Joaquin, State of California

By \_\_\_\_\_  
GEORGE L. BARBER, Chairman  
Board of Supervisors

By \_\_\_\_\_ (SEAL)  
Deputy Clerk

APPROVED AS TO FORM:  
Terrence Dermody, County Counsel

By \_\_\_\_\_  
REBECCA DAVIS  
Deputy County Counsel

CITY OF STOCKTON, a Municipal  
Corporation

By \_\_\_\_\_  
Title \_\_\_\_\_

ATTEST:  
Clerk of the City of Stockton

By \_\_\_\_\_ (SEAL)  
City Clerk

APPROVED AS TO FORM:  
R. THOMAS HARRIS, City Attorney

By \_\_\_\_\_

CITY OF LODI, a municipal  
corporation

By \_\_\_\_\_

Title \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Lodi City Attorney

CITY OF MANTECA, a municipal  
corporation

By \_\_\_\_\_

Title \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Manteca City Attorney

CITY OF TRACY, a municipal  
corporation

By \_\_\_\_\_

Title \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
City Clerk  
APPROVED AS TO FORM:

\_\_\_\_\_  
Tracy City Attorney

CITY OF LATHROP, a municipal  
corporation

By \_\_\_\_\_

Title \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Lathrop City Attorney

CITY OF ESCALON, a municipal  
corporation

By \_\_\_\_\_

Title \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Escalon City Attorney

CITY OF RIPON, a municipal  
corporation

By \_\_\_\_\_

Title \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Ripon City Attorney

MEMORANDUM  
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TO: The Honorable Mayor and  
Members of the City Council

FROM: City Attorney Bob McNatt

DATE: July 3, 1989

SUBJ: Opinion Regarding Organization and Funding of the  
Municipal Library

Questions were raised by the City Council at the Shirtsleeve Session of June 28, 1989 regarding the organization and funding of the Municipal Library. Similar issues have been previously addressed by former City Attorney Bob Mullen in opinions dated November 1, 1968 and January 4, 1974 (attached) and in an informal opinion by the California General's Office dated June 22, 1987 (attached). I agree with the observations and conclusions reached in these letters and summarize certain relevant points as follows:

- The Library Board is a quasi-autonomous body. Although members are appointed to three-year terms by the Mayor with the consent of the Council (Education Code Section 18910) the Trustees are thereafter not answerable to the Council.
- The Library Board has all necessary authority to "fix rules, regulations and by-laws" (Section 18919) and to hire, fire, supervise and set compensation for Library employees (Section 18921).
- Although internally autonomous, the Library is not independent of the City; its employees are City employees, it takes title to property in the name of the City, and relies on the City's revenue raising authority (City of Ukiah vs Library Board of Trustees of the City of Ukiah (1961) 15 CAL RPT 811).

The Honorable Mayor and  
Members of the City Council  
Organization and Funding of the Municipal Library

July 3, 1989  
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In addition to these general observations, the following specific responses are offered:

#### ORGANIZATION OF THE LIBRARY

As pointed out above, the Library is a semi-autonomous entity. The only authority to organize a municipal library is found in Education Code Section 18900 et seq (Municipal Library Act) and the provisions of this act are mandatory. In a recent case, the City Council of Monterey Park attempted to abolish the Library Board of Trustees and to take over operation and management of the library. The City was sued by an organization of library supporters. The District Court of Appeals ruled that the City lacked authority to dissolve the board and ordered the incumbent trustees reinstated in office, extending their terms for a period of time equal to the period in which they were denied their seats (Friends of the Library of Monterey Park vs. City of Monterey Park (June 1989) 89DAR7343).

The court here ruled that since the Municipal Library Act provides exclusive authority for creation of libraries and mandates a five-member board to be appointed for three-year terms, the City Council could not abolish the office of Library Trustee since "a local office mandated by State law may not be abolished by local ordinance." (Monterey Park, supra, 7353, citing Demeritt vs Weldon (1908) 154 CAL 545, 549).

Questions were also presented as to the appointment/re-appointment of Board members. As discussed above, the Board members are appointed by the Mayor with the consent of the Council for three-year terms. Their terms of office continue (even past three years) until their successors have been appointed and qualified (Gov. Code Section 1302). Board members apparently need not be residents of the City, and as pointed out in the attached informal opinion of the Attorney General, there is apparently no reason why the City Council could not appoint its own members to the Library Board as the terms of office expire and the seats become vacant.

This presumes that no conflict of interest is found to exist. Education Code Section 18911 gives the Council authority to provide compensation for up to \$50 per month to trustees, although I am informed that in our situation the trustees serve without pay. If the Council ever proposed to provide compensation to the trustees position, and Council members had been appointed to the Library Board, a conflict of interest could arise.

The Honorable Mayor and  
Members of the City Council  
Organization and Funding of the Municipal Library

July 3, 1989  
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#### FUNDING OF THE LIBRARY


As stated in Mr. Mullen's memo of November 1968, the "...the Council's only control over the operations of the Library..." is under the City's fiscal authority. In his January 4, 1974 memo, Mr. Mullen refers to former Education Code Section 27401 which directed a tax levy to support the library. This statute said that the City Council "...shall, in making the annual tax levy...levy a tax for the purpose of constructing and maintaining the library and purchasing the property necessary therefore.... The tax levy shall not exceed thirty cents per \$100 of assessed evaluation." This language is phrased in the mandatory.

However, this section was repealed in 1976 when the Municipal Library Act was reorganized and no similar section was included in the new Municipal Library Act, adopted as Education Code Section 18900 et seq. Shortly thereafter, Prop. 13 was voted into law, which limits the ability of cities to impose such taxes even if they desire to do so. I am unaware of any other requirement obligating the City to fund its library in any certain fashion or any particular amount.

Once money is allocated to the library however, it appears the Council has no more control over it. Education Code Section 18951 requires all money from gifts, bequests "or otherwise" to be placed in the designated Library Fund. Payments from this fund are at the discretion of the Library Trustees under Section 18953. The Board also sets salaries for Library employees (Section 18921) and is empowered to purchase personal property (Section 18922) and real property (Section 18923). This implies complete control over the Library budget.

In summary, although the Library Board apparently has complete discretion over its own budget, the City Council is under no obligation of which I am aware to fund the library in any particular amount.

Respectfully submitted,



Bob McNatt  
City Attorney

BMN:br

#### Attachments

cc: City Manager  
Librarian  
Library Board

LIB/FUND

November 1, 1968

Hon. Robert F. Hunnell, Mayor  
City of Lodi  
City Hall  
Lodi, California 95240

Dear Mayor Hunnell:

You asked whether the City Council or the Board of Trustees of the library had the authority to fix the salaries of the library employees.

The answer is that the Board of Trustees of the library fix and determine the amount of the salaries to be paid to the employees of the library.

Our library is established under the provisions of Sections 27301 et seq, of the Education Code of the State of California. These Code Sections provide that the library "shall be managed by a board of library trustees, consisting of five members, to be appointed by the mayor,...with the consent of the legislative body of the municipality." (Section 27351).

The term of office of the trustees is three years and they serve without compensation. (Section 27352).

Section 27362 is determinative of the question you asked as this section reads as follows:

"Officers and employees. The board of library trustees may prescribe the duties and powers of the librarian, secretary, and other officers and employees of the library; determine the number of and appoint all officers and employees, and fix their compensation. The officers and employees shall hold their offices or positions at the pleasure of the board." (Emphasis added).

Subsequent sections authorize the board to purchase books, publications, etc. and they may also purchase real property and erect or rent and equip such buildings or rooms as may be necessary "when in its judgment a suitable building, or

Hon. Robert F. Munnell, Mayor

Page 2

November 11, 1968

portion thereof, has not been provided by the legislative body of the municipality for the library." (Section 27364).

Because the library is not given the power to levy a tax to carry on their work, it is obvious that the amount of money to be raised by taxes is determined by the City Council and this apparently would be the Council's only control over the operations of the library. Section 27401 states that the legislative body "shall" levy a tax for the purpose of constructing and maintaining the library and the monies so raised shall be apportioned to a fund to be designated the library fund and applied to the purposes authorized in the Code Sections. The tax levy shall not exceed thirty cents per \$100.00 of assessed valuation. (Section 27401 and 27402).

From the foregoing brief synopsis, I believe that it is clear that the board of trustees has the right to hire and fire their own employees, fix their salaries, and to purchase all necessary supplies required to carry on the work of a library.

Very truly yours,

Robert H. Mullen  
City Attorney

RHM:kgk

OFFICE COPY

CITY COUNCIL

RICHARD L. HUGHES, Mayor  
JAMES W. PINKERTON, Jr., Mayor Pro Tem  
EZRA EHRHARDT  
WALTER KATNICH  
BEN SCHAEFFER

CITY OF LODI

CITY HALL, 221 WEST PINE STREET  
LODI, CALIFORNIA 95240  
(209) 368-0641

HENRY A. GLAVES, Jr.  
City Manager

MISS BESSIE BENNETT  
City Clerk

ROBERT H. MULLEN  
City Attorney

January 4, 1974

The Honorable Richard Hughes,  
Mayor, City of Lodi  
and Members of City Council  
City Hall  
221 West Pine Street  
Lodi, California 95240

Re: Opinion of Library Board's  
Powers and Duties

Gentlemen:

You have asked my opinion on the above subject.

The Carnegie Library such as we have in Lodi is governed by the provisions of Section 27351, et seq. of the Education Code.

Omitting the section numbers, it is set forth in these sections that the "public library shall be managed by a Board of Library Trustees, consisting of five members, to be appointed by the Mayor! . . . with the consent of the legislative body of the municipality".

The Trustees of the library hold office for three years "serving without compensation". Both men and women are eligible to appointment as Trustees and vacancies shall be filled by appointment for the unexpired term in the same manner as the original appointment is made.

The Board is directed to meet "at least once a month at such times and places as they fix by resolution with, of course, the privilege of calling special meetings at any time by three Trustees serving written notice upon each member at least three hours before the time specified".

A majority of the Board constitutes a quorum and the Board selects one of their members to serve as President for a one year term.

The Honorable Richard Hughes,  
Mayor, City of Lodi  
and Members of City Council

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January 4, 1974

The Board is specifically given the power to "make and enforce all rules, regulations and bylaws necessary for the administration, government and protection of the libraries under its management, and all property belonging thereto".

The Board is given the power to administer any trust that is created for its benefit and receive by gift, devise or bequest and hold in trust or otherwise, property, and where there is no restriction they may dispose of the property for the benefit of the library.

The Board is given the power to "prescribe the duties and powers of the Librarian, Secretary and other officers and employees of the library; determine the number of and appoint all officers and employees and fix their compensation. The officers and employees shall hold their offices or positions at the pleasure of the Board".

The Board is given the power to purchase the necessary books, journals, publications and other personal property.

Section 27364 of the Education Code is most important and I quote that section in full as follows:

- "The Board of Library Trustees may purchase real property, and erect or rent and equip, such buildings or rooms, as may be necessary, when in its judgment a suitable building, or portion thereof, has not been provided by the legislative body of the municipality for the library."

The Board is given the general powers to "do and perform any and all other acts and things necessary or proper to carry out the provisions of this chapter (commencing at Section 27301)".

The Board is mandated to make an annual report to the legislative body of the City as well as to the State Librarian.

The Honorable Richard Hughes,  
Mayor, City of Lodi  
and Members of City Council

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January 4, 1974

Under Article 3 commencing at Section 27401 will be found the provisions regarding the financial support of the libraries. Again this section is most important and is quoted in full as follows:

"The legislative body of any municipality in which a public library is established pursuant to this chapter shall in making the annual tax levy and as a part thereof, if the construction and maintenance of the library has not been otherwise provided for, levy a tax for the purpose of construction and maintaining the library and purchasing the property necessary therefor. The tax shall be in addition to other taxes, the levy of which is permitted in the municipality. The tax levy shall not exceed thirty cents per one hundred dollars of assessed valuation. As used in this section, maintenance includes preserving, repairing and altering existing structures." (Emphasis added.)

The next section requires that the monies received from the aforesaid tax, together with any monies that the Board may acquire by way of gift or bequest shall be put into a fund to be designated the "Library Fund" and shall be applied to the purposes authorized in the chapter.

Payments from the "Library Fund" are made upon warrants issued after due audit by an order from the library trustees. These warrants are signed by the President and Secretary of the Library Board and the "Treasurer of the municipality shall pay such warrants without any further order or warrant from any other authority".

The libraries created in accordance with the provisions of these sections of the Education Code are to be free to all the inhabitants and non-resident taxpayers of the municipality and any person who violates any rule or regulation or bylaw may be fined or excluded from the privileges of the library. Authority is given for contracts with neighboring municipalities, counties or states to furnish books, etc.

The Honorable Richard Hughes,  
Mayor, City of Lodi  
and Members of City Council

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January 4, 1974

The next important section is 27453 which is quoted as follows:

"The title to all property acquired for the purposes of the library, when not inconsistent with the terms of its acquisition, or otherwise designated, vests in the municipality in which the library is situated, and in the name of the municipal corporation may be sued for and defended by action at law or otherwise."

I appreciate that this language may sound a little clumsy, but that is the exact quote from the Code.

Finally, provision is made for the disestablishment of the library, which would take place when fifty-one percent of the electors of the municipal corporation vote for the disestablishment, which is done by repealing the ordinance which originally created the library.

There are two sections of the Lodi City Code that should also be called to your attention. The first is Section 2-30, which is a part of the ordinance establishing the City Manager form of government. The second sentence of that section reads:

"The City Manager shall have no power to administer the affairs of the City Library nor shall he have any control or direction over the Board of Trustees of the Library."

The other section is Section 17-4, being a part of the personnel ordinance. The pertinent parts of this section are:

"The appointing authorities are the City Council in the case of the City Manager, City Clerk and City Treasurer; the Library Board in the case of library employees; and the City Manager for all other employees. . . ."

The Honorable Richard Hughes,  
Mayor, City of Lodi  
and Members of City Council

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January 4, 1974

There is a paucity of case law and judicial decisions interpreting the aforesaid provisions. It is probably of interest that the original statute authorizing the establishment of libraries was enacted in 1880 and that statute was repealed by a statute of 1901 which in effect reenacted the original statute. When our codes were established the provisions of the 1901 statute were placed in the Education Code.

My research indicates a case decided in January, 1906, being entitled The Board of Library Trustees of Hanford vs. The Board of Trustees of Hanford, 2 Cal.App. 760 (1908). The defendant as you note was the City Council as they were formerly called Trustees. The facts of the case were that a gift was made to the City of \$12,500.00 by Andy Carnegie. The City proceeded to use those funds to award a contract for the building of a library. The Library Board filed a suit to enjoin and the Court held that under the terms of the gift to the City the Library Trustees had no right or jurisdiction over the funds and could not prevent the City Trustees (Council) from proceeding with the construction of the building. The case of course was decided pretty much upon the terms of the gift of the funds to the City and I can find no case where the question has been decided by the courts as to whether the monies established and created by the levy of a tax for building would be under the exclusive control of the Library Board or the City Council in awarding the contract for the construction of the building.

The only other case that I have found discussing the above provisions of the Education Code is the case of the City of Ukiah vs. The Board of Trustees of the Library of the City of Ukiah, which case was decided September 1, 1961, and is cited in 15 Cal.Rptr., page 811. This case determined whether an employee janitor of the City Library was or was not an employee of the City of Ukiah, and hence came within the provisions of the Civil Service Act which that city had adopted. It was the decision of the Court that the employee was an employee of the City of Ukiah by reason of the language of the Civil Service Ordinance which purportedly covered "all offices, positions and

The Honorable Richard Hughes,  
Mayor, City of Lodi  
and Members of City Council

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January 4, 1974

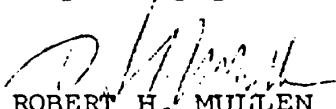
employees in the service of the city". The Court reached the conclusion that the particular person was an employee of the city and entitled to Civil Service status. In arriving at its conclusion the Court wrote certain dicta which I know will be of interest to you and I quote that portion of the case as follows:

"From the statutes above quoted (the Education Code sections that I have cited above) it is quite evident that a municipal library is entirely dependent upon the City. The means by which it operates is the result of the taxing power of the City; it takes title to property in the name of the City; it can only sue and be sued in the name of the City; it can only be formed by an act of the legislative body of the City; and although it may be said to be completely autonomous as to the manner of its internal operation, nevertheless it is not independent of the City."

I believe that members of the Council have in the past heard me orally opine as to the relative duties and powers of the Council and the Board and that the statement of the Court immediately above quoted is a fair summary of the opinions that I have expressed.

I feel that the shortage of case law can be readily explained in that the problems have not come up between Councils and their Library Boards in the past because both groups are working for the good of the City and any differences have been resolved between them without the benefit of a Judge telling them what they can or can't or should or shouldn't do. I have every confidence that this situation will prevail in Lodi.

Very truly yours,

  
ROBERT H. MULLEN  
City Attorney

RHM:sal

# CALIFORNIA STATE LIBRARY

LIBRARY—COURTS BUILDING • P.O. BOX 942837 • SACRAMENTO, CA 94237-0001



TELEPHONE: (916) 445-2585

July 13, 1987

TO: All Public Library Directors

FROM: Gary E. Strong  
California State Librarian *Gay E. Strong*

SUBJECT: GOVERNANCE OF PUBLIC LIBRARIES IN GENERAL LAW CITIES

For your information, I am enclosing a copy of an informal opinion from the Attorney General's Office on the governance of public libraries in general law cities. Please note the caveat in the first paragraph of the enclosure, that it has not undergone the formal review necessary to be considered an official opinion.

It was issued at my request to clarify a number of questions I have received regarding the authority and responsibility of library boards. Although this is an informal opinion, it is based on informed professional judgement and speaks to issues and concerns of direct interest to libraries around the state. I hope you will share it with your library boards and other interested officials.

Enclosure: As noted.

GES/JH/mtf

## Memorandum

To : Gary E. Strong  
State Librarian

Date : June 22, 1987

File No.:

Telephone: ATSS ( 8 ) 454-5490  
(916 ) 324-5490

From : Marybelle D. Archibald  
Office of the Attorney General—Sacramento

Subject: Governance of Public Libraries in General Law Cities

You have requested advice on several aspects of municipal library operation. I offer the following as my own opinion: it has not been reviewed nor is it the opinion of this office.

Question 1(a): May Government Code section 39732 be used to administer public library services, as an alternative to Education Code sections 18900-18965?

Conclusion: This question has been answered in 61 Ops.Cal.Atty.Gen. 512 at 517:

"In reply we would first note that Government Code section 39732(a) is merely a general enumeration of the public facilities, including libraries, that a city may establish and operate. The section in no way purports to specify the details of operating such facilities. But, on the other hand, the provisions of the Education Code relating to city libraries (secs. 18900-18965) elaborate a detailed scheme for the establishment and operation of such libraries. In view of the fundamental rule of statutory construction 'that a special statute dealing expressly with a particular subject controls and takes precedence over a general statute covering the same subject' (Gillett-Harris-Duranceau & Associates, Inc. v. Kemple (1978) 83 Cal.App.3d 214, 222), we conclude that the detailed provisions of the Education Code prevails over the general provisions of the Government Code to the extent that they may be inconsistent.

"Further, because of the marked contrast between the unelaborated designation of city libraries in Government Code section 39732 and the extended and detailed provisions for such libraries in the

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Education Code, Government Code section 39732 cannot be viewed as an independent alternative source of library-establishing authority for cities but must be viewed merely as a collateral confirmation of the grant of authority more fully delineated in the Education Code.

"If it were viewed otherwise, local authorities could completely bypass the Education Code's explicit directives for the establishment and operation of public libraries simply by declaring in some manner that the library was being established under the minimal provisions of the Government Code rather than under the Education Code. It cannot be presumed that the Education Code's elaborately devised legislative plan for the establishment and operation of city public libraries was to have so little authoritative significance. Statutes are not to be interpreted in a manner which affords an opportunity for evasion of its provisions. (Freedland v. Greco (1955) 45 Cal.2d 462, 468; People v. McKale (1978) 83 Cal.App.3d 623, 633; Cahall v. Department of Motor Vehicles (1971) 16 Cal.App.3d 491, 495.)"

**Question 1(b):** If Government Code sec. 39372 may be so used, and is so used, are there any provisions in Education Code secs. 18900-18956 that must still be followed?

**Conclusion:** In light of the response to Question 1(a), no response to this query is necessary.

**Question 1(c):** Are there any other legal bases for establishment and operation of public libraries in general law cities, and if so, how do they relate to the cited Education Code and Government Code sections?

**Conclusion:** Education Code section 19400 et seq. provides for formation of library districts and Education Code section 19401 permits the district to include incorporated territory with the proviso that "the territory of no city is divided." Thus a district could encompass an area served by a municipal library, but the district's management remains distinct.

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**Question 1(d):** In case of conflict between the provisions of the Education Code, and those of the Government Code or other authorities relating to operation of public libraries, which provisions would govern?

**Conclusion:** Without a specific example, that question cannot be answered. Statutory construction is governed by a myriad of principles (see, for example, the response to Question 1(a)).

**Question 2(a):** If the Education Code sections must be used, and a board of library trustees is to be appointed under sec. 18910, may the appointing authority appoint as library trustees members of the City Council, the mayor, or other executive head of the municipality?

**Conclusion:** Neither Education Code section 18910, nor other provisions of the Municipal Library Act, prohibits the appointing authority from nominating himself or herself, or members of the municipality's legislative body, to the board of library trustees. However, it may be that the municipality has a conflict of interest statement or incompatibility of office guidelines which may make such an appointment illegal or unwise.

**Question 2(b):** Must library trustees be residents of the city?

**Conclusion:** The board of trustees may permit nonresidents to borrow materials, as well as residents. And nothing in the Municipal Library Act mandates that members of the board of library trustees be residents of the municipality. This contrasts, for example, with Education Code section 19420, which specifies appointment of library district trustees from designated areas.

**Question 3(a):** If the City has not brought any library employees under its personnel ordinance as contemplated in City of Ukiah v. Board of Trustees (1961) 195 Cal.App.2d 344, then does authority to appoint the library director and staff, define their duties, set their salaries and benefits, etc. reside with the board of library trustees under Education Code sec. 18921, or does it reside with the City Council, the City Manager, City Personnel Officer, or other officers of general municipal administration?

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**Conclusion:** The determination of whether or not to have a civil service system is within the discretion of the particular municipality (Gov. C., sec. 45001; see, 58 Ops. Atty. Gen. 104). Inclusion of library employees is optional (Gov. C., sec. 45002). Should the municipality choose to have a civil service system which does not include library employees, or choose not to have a civil service system then, pursuant to Education Code section 18921, the board of library trustees retains authority over officers and employees.

**Question 3(b):** May the board of library trustees purchase real property or carry out other acts contemplated under Education Code section 18923, within the limits of funds available to it?

**Conclusion:** Education Code section 18923 would appear to place primary responsibility upon the legislative body of the municipality to provide a suitable building or portion thereof for a library. The Legislature defers to the expertise of the board of library trustees to judge what is suitable, then clearly provides the board with separate authority to purchase real property or function in a manner to provide suitable library space.

**Question 3(c):** May a board of library trustees appointed under Education Code section 18910 act solely as advisory to the Library Director and to the City Council, and not perform the management functions authorized under Education Code sections 18910-18927?

**Conclusion:** A board of library trustees cannot exist solely as an advisory body. Education Code section 18910 specifies that the public library "shall be managed" by the trustees. The plain meaning of "manage" denotes active participation in supervising, directing, and administering a program. Had the Legislature intended the trustees to function in an advisory capacity, it could have so limited their responsibilities.

**Question 3(c)(1):** If it may, does authority to decide that the board will act solely in an advisory capacity rest with the board of trustees, or does it rest with the City Manager, City Council, or other municipal officer or body? If that authority may be so exercised, and is, is there other local authority that can overrule it, so that the board performs the Education Code management functions?

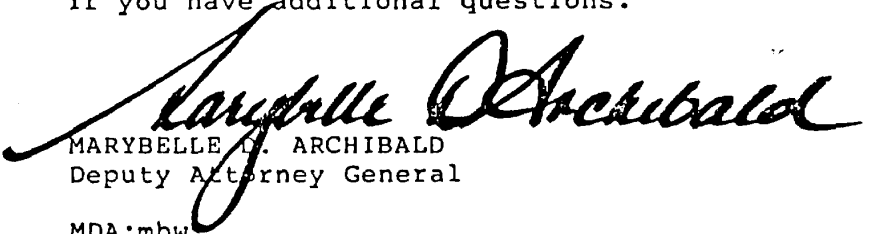
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June 22, 1987  
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Conclusion: In light of the response to question 3(c), no response to this query is necessary.

Question 3(c)(2): If it may not, but nevertheless so acts, how may it be compelled to exercise the responsibilities of Education Code sections 18910-18927?

Conclusion: A person (or a public body) beneficially interested in having a board of library trustees exercise its statutory responsibilities and in having public duties enforced, could petition for a writ of mandamus (Code Civ. Proc., secs. 1084, 1085). A writ to compel performance may be issued if there is no adequate remedy at law (for example, civil suit for damages against board members) and the petitioner can prove that substantial damage will be suffered if the writ is not issued.

Do not hesitate to contact me if you wish to discuss my responses or if you have additional questions.



MARYBELLE D. ARCHIBALD  
Deputy Attorney General

MDA:mbw

6362.5. Information on new materials. The State Librarian shall periodically supply to each law library established under the provisions of this chapter, and requesting the same, information regarding newly published materials to aid such libraries in their selection of new materials.

6363. Declaration of intent. Whenever a law library, and a board of trustees to govern the same, is in existence under the provisions of any law, other than the law superseded by this chapter, in any county, or city and county, in this state, this chapter shall not be considered a repeal of any legislation under which such library was established and is now governed, but shall be deemed to confer upon such library the benefits of Sections 6321, 6322, 6322.1, 6326, 6341, 6345, 6346, 6346.5, and 6347.

6364. Discretion of supervisors. It is discretionary with the board of supervisors of any county to provide by ordinance for the application of the provisions of this chapter to the county.

6365. Discontinuance of Library. Whenever the board of supervisors in any county in this state in which there is but one judge of the superior court, which board shall have adopted the provisions of this chapter and established a law library, desire to discontinue such law library, they shall by ordinance declare their intention so to do, and shall provide in such ordinance that the books already in the library shall be transferred to and kept in the chambers of the judge of the superior court of such county. All moneys on hand in the law library fund of such county, and the office of member of the board of law library trustees of such law library shall be abolished. After such an ordinance takes effect, the county clerk of such county shall not collect the fees and costs provided for the law library.

#### MUNICIPAL LIBRARIES

(Educ. Code, Secs. 18900-18905)

##### ARTICLE 1. ESTABLISHMENT

18900. Establishment by a legislative body. The common council, board of trustees, or other legislative body of any city in the state may, and upon being requested to do so by one-fourth of the electors of the municipal corporation in the manner provided in this article, shall, by ordinance, establish in and for the municipality a public library if there is none already established therein.

18901. Petition of electors. The request may be by a single petition, or by several petitions. The several petitions shall be substantially in the same form. The single petition, or several petitions in the aggregate, shall have, the signatures of the requisite number of electors.

##### ARTICLE 2. TRUSTEES

18910. Board of library trustees. The public library shall be managed by a board of library trustees, consisting of five members, to be appointed by the mayor, president of the board of trustees, or other executive head of the municipality, with the consent of the legislative body of the municipality.

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18924. State publications. The board of library trustees may request the appropriate state officials to furnish the library with copies of any and all reports, laws, and other publications of the state not otherwise disposed of by law.

18925. Books. The board of library trustees may borrow books from, lend books to, and exchange books with other libraries, and may allow nonresidents to borrow books upon such conditions as the board may prescribe.

18926. General duties. The board of library trustees may do and perform any and all other acts and things necessary or proper to carry out the provisions of this chapter.

18927. Annual report. The board of library trustees, or if there is no board of trustees, then the administrative head of the library shall, on or before August 31st, in each year, report to the legislative body of the municipality and to the State Librarian on the condition of the library, for the year ending the 30th day of June preceding. The reports shall, in addition to other matters deemed expedient by the board of trustees or administrative head of the library, contain such statistical and other information as is deemed desirable by the State Librarian. For this purpose the State Librarian may send to the several boards of trustees or administrative heads of the library instructions or question blanks so as to obtain the material for a comparative study of library conditions in the state.

#### ARTICLE 3. SUPPORT OF LIBRARIES

18951. Library fund. All money acquired by gift, devise, bequest, or otherwise, for the purposes of the library, shall be apportioned to a fund to be designated the library fund, and shall be applied to the purposes authorized in this chapter.

18952. Administration of gifts. If payment into the treasury is inconsistent with the conditions or terms of any gift, devise, or bequest, the board shall provide for the safety and preservation of the fund, and the application thereof to the use of the library, in accordance with the terms and conditions of the gift, devise, or bequest.

18953. Warrants. Payments from the fund shall be made upon warrants issued after due audit by, and an order from, the library trustees. The warrants shall be signed by the president and secretary of the board of library trustees. The treasurer of the municipality shall pay such warrants without any further order or warrant from any other authority.

#### ARTICLE 4. GOVERNMENT

18960. Rules. Every library established pursuant to this chapter shall be forever free to the inhabitants and nonresident taxpayers of the municipality, subject always to such rules, regulations, and bylaws as may be made by boards of library trustees. Any person who violates any rule, regulations, or bylaw may be fined or excluded from the privileges of the library.

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**18961. Contract with city or county.** The board of library trustees and the legislative body of any neighboring municipality or the board of supervisors of the county in which the public library is situated, may contract for lending the books of the library to residents of the county or neighboring municipality, upon a reasonable compensation to be paid by the county or neighboring municipality.

**18962. Legal title.** The title to all property acquired for the purposes of the library, when not inconsistent with the terms of its acquisition, or otherwise designated, vests in the municipality in which the library is situated, and in the name of the municipal corporation may be sued for and defended by action at law or otherwise.

**18963. Continued existence.** Any municipal library which was established and existed on June 11, 1909, under the provisions of an act entitled "An act to establish free public libraries and reading rooms," approved April 26, 1880, is continued under the provisions of this chapter and shall be considered the same as if established under the provisions of this chapter. This chapter has no application to any library established or governed by a city charter, and any city charter is in no manner affected by this chapter.

**18964. Disestablishment.** Any ordinance establishing a library adopted pursuant to this chapter shall be repealed by the body which adopted it upon being requested to do so by 51 percent of the electors of the municipal corporation, as shown by the great register. Upon the repeal of the ordinance the library is disestablished in the municipal corporation.

**18965. Dissolution of boards.** Whenever the governing bodies of two or more cities or counties consolidate their existing public library services, as a joint exercise of powers under Chapter 5 (commencing with Section 6500), Division 7, Title 1 of the Government Code, and the ownership or management of the cities' and counties' library facilities and other library assets are turned over to a newly formed joint agency, any boards of public library trustees existing prior to the consolidation, may be dissolved by ordinance.

#### Alternative Authority for Municipal Libraries

(Gov. Code Sec. 39732)

**39732. Acquisition and operation.** The legislative body may:

(a) Acquire, own, construct, maintain and operate . . . public libraries

#### Acquisition, Improvement, and Maintenance of Library Sites

(Park and Playground Act of 1909)

(Gov. Code, Secs. 38000-38011)

**38002. "Improvement" defined.** As used in this chapter, "improvement" includes a public park, urban openspace lands, playground, or library.

**38010. Condemnation.** When the public interest or convenience requires, the legislative body may acquire by condemnation land situated in the city for improvements.

RESOLUTION NO. 95-83

A RESOLUTION OF THE LODI CITY COUNCIL  
IN SUPPORT OF LEGISLATION FOR ENACTMENT OF A  
TRANSACTIONS AND USE TAX FOR LIBRARY PURPOSES

---

WHEREAS, over one-half of the revenue collected by San Joaquin County to support the operations of the Stockton-San Joaquin County Public Library has been lost due to the elimination of the Special District Augmentation Fund; and

WHEREAS, library services to residents served by the Stockton-San Joaquin County Public Library have been reduced drastically as a result of this loss of revenue; and

WHEREAS, the Lodi Public Library has reduced hours of service, invaded reserves, and has felt an impact from the loss of Library service elsewhere in San Joaquin County; and

WHEREAS, an Intergovernmental Task Force on Library Funding was formed to study Library operations and recommend mechanisms to provide adequate library service to area residents; and

WHEREAS, the Task Force recommended that such funding be accomplished by an additional county-wide dedicated transactions and use tax of one-eighth of 1 percent which would generate an estimated \$5M per year for the Library; and

WHEREAS, a vote to increase San Joaquin County transactions and use tax rate by one-eighth of 1 percent for library services requires enabling state legislation;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lodi to: 1) support the Task Force recommendation to increase the transactions and use tax by one-eighth of 1 percent for library services and efforts to secure the required enabling legislation and 2) upon passage, this resolution will be conveyed to Senator Patrick Johnston, Assemblyman Michael Machado, and Assemblyman Larry Bowler.

Dated: June 21, 1995

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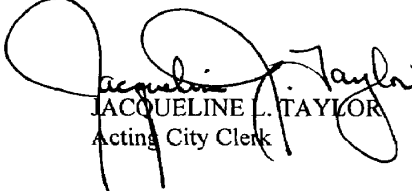
I hereby certify that Resolution No. 95-83 was passed and adopted by the City Council of the City of Lodi in a regular meeting held June 21, 1995, by the following vote:

AYES: COUNCIL MEMBERS - Davenport, Pennino, Warner and Mann (Mayor)

NOES: COUNCIL MEMBERS - Sieglock

ABSENT: COUNCIL MEMBERS - None

ABSTAIN: COUNCIL MEMBERS - None

  
JACQUELINE L. TAYLOR  
Acting City Clerk

RESOLUTION NO. 95-84

A RESOLUTION OF THE LODI CITY COUNCIL  
IN SUPPORT OF BALLOT MEASURE TO INCREASE SALES TAX RATE  
IN SAN JOAQUIN COUNTY AND ELECTION COST SHARING PLAN

---

WHEREAS, the Lodi City Council supports a ballot measure to increase the sales tax rate in San Joaquin County by 1/8 cent to supplement existing funding for the Lodi Public Library; and

WHEREAS, residents of Lodi will benefit directly from increased revenue for library services; and

WHEREAS, there are election costs associated with the proposed ballot measure; and

WHEREAS, the jurisdictions whose residents would benefit from increased revenue for library services should share in the cost of said election;

BE IT THEREFORE RESOLVED that City of Lodi accepts the election cost-sharing plan outlined below, and agrees to the conditions so outlined:

**ELECTION COST-SHARING PLAN:**

- 1.) If a transactions and use tax of one-eighth of one percent for library services is passed by 2/3 vote, the costs of placing the measure on the ballot will be paid from the additional revenue generated for the library by the tax;
- 2.) If the measure does not pass by 2/3 vote, the City of Lodi will pay its share of the election cost, based upon the percentage of registered voters at the time of the election.
- 3.) In order to implement this agreement, the City Council will direct appropriate City staff to execute a Memorandum of Understanding with the County of San Joaquin and the cities of Escalon, Lathrop, Manteca, Ripon, Stockton and Tracy.

Dated: June 21, 1995

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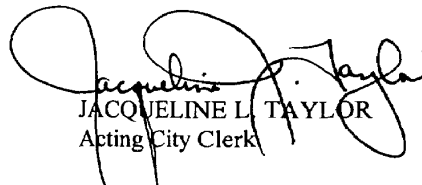
I hereby certify that Resolution No. 95-84 was passed and adopted by the City Council of the City of Lodi in a regular meeting held June 21, 1995, by the following vote:

AYES: COUNCIL MEMBERS - Davenport, Pennino, Warner and Mann (Mayor)

NOES: COUNCIL MEMBERS - Sieglock

ABSENT: COUNCIL MEMBERS - None

ABSTAIN: COUNCIL MEMBERS - None

  
JACQUELINE L. TAYLOR  
Acting City Clerk